

Original Title Page

ML/MSC OCEANIA SPACE CHARTER AGREEMENT

FMC AGREEMENT NO. 012139-002  
(2<sup>nd</sup> Edition)

This Agreement is herein republished.

Original Effective Date: November 25, 2011

Expiration Date: None.

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**ARTICLE 1: NAME OF THE AGREEMENT**

The name of this Agreement is the ML/MSC Oceania Space Charter Agreement (the "Agreement").

**ARTICLE 2: PURPOSE OF THE AGREEMENT**

The purpose of this Agreement is to authorized the chartering of space and a limited range of related cooperative activities in the trade covered by the Agreement.

**ARTICLE 3: PARTIES TO THE AGREEMENT**

The parties to the Agreement (hereinafter referred to individually as "Party" and jointly as "Parties") are:

1. Maersk A/S  
50, Esplanaden  
DK-1098 Copenhagen K  
Denmark
2. MSC Mediterranean Shipping Company S.A. ("MSC")  
Chemin Rieu 12, 1208  
Genève, Switzerland

**ARTICLE 4: GEOGRAPHIC SCOPE**

This Agreement covers the trades between ports on the U.S. Pacific Coast, on the one hand, and ports in Australia, and New Zealand on the other hand. All of the foregoing is hereinafter referred to as the "Trade."

**ARTICLE 5: AGREEMENT AUTHORITY**

5.1 Vessels and Service.

(a) During the term of this Agreement, ML shall procure that it and its vessel(s) (as well as other entities and vessels upon which space is provided) shall comply with the requirements of the ISM code. Upon request, ML shall provide a copy of the Document of Compliance (DOC) and Safety Management Certificate (SMC) to MSC.

(b) ML may add ad hoc port(s) of call at its discretion, provided always that such call(s) has no effect on the schedule integrity of vessels in the service, including their weekly frequency normal transit times. In the event of an ad-hoc addition of a port(s) of call ML shall be the only Party responsible for operational costs which would not otherwise have been incurred such as but not limited to deviation cost and port cost, and have exclusive rights of discharge/load at the additional port of call. MSC may load and/or discharge cargo and containers at an additional port of call with the prior consent of the ML, provided that the Parties participating in such call, share all additional costs which are incurred in

connection with such port call (including, without limitation, the port and fuel costs) in proportion to their respective number of commercial moves (loading, discharging and restows).

(c) Responsibility for operational costs (such as but not limited to transshipment, storage, restow and feeding costs and any fines from a competent authority, as a direct result of the omission) arising from port omissions shall be allocated as follows:

- (i) when the omission is due to circumstances beyond the control of either Party (as defined by the Parties from time to time), costs shall be borne by each Party. Any terminal charges such as storage, re-nominations, documentation/administrative charges and custom clearance, etc. to be for the account of each Party. Each Party will be responsible for the costs of and for arranging the transshipment and feeding (which may be by means of the next vessel) of its own containers loaded on board the vessel for the omitted port(s) prior to the proposal of the port omission(s). Containers left at quay to/from the omitted port shall be loaded on the next available vessel within each individual Party's allocation. Unless otherwise agreed, each Party shall remain responsible for controlling the movement of its goods and containers from the vessel and incurring all costs relating to that movement. The Parties shall always seek to minimize the additional costs of the port omission.
- (ii) when the omission is the result of action of or within the control of ML (as defined by the Parties from time to time), costs shall be borne by ML. Any terminal charges such as storage, re-nominations, documentation/administrative charges and custom clearance etc. to be for the account of each Party. ML will be responsible for delivering import containers to the intended port of discharge (which may be by means of the next vessel) within a reasonable delay at the actual port of discharge. All containers ready at quay as per terminal lists or included in the load list will be loaded on the following vessel within the volume allocation of ML unless otherwise agreed between Parties on a case by case basis. In case the omission is announced before containers are ready at quay or before load list was submitted, compensation should be based on

the average loadings of MSC in the omitted port over the latest three sailings without incident. ML shall have no other or further responsibility to compensate MSC whatsoever. The compensation shall be by space on subsequent sailings or payment at the agreed slot cost, or a combination of both, by agreement. Notwithstanding the aforementioned, no compensation will be granted in case a Party manages to fill its allocation upon departure from the last Westbound or Eastbound port.

(iii) when the omission is the result of an action of or within the control of MSC (as defined by the Parties from time to time), costs shall be borne by MSC. Any terminal charges such as storage, re-nominations, documentation/administrative charges and custom clearance etc. to be for the account of each Party. MSC will be responsible for delivering the import containers to the intended port of discharge, which could be by means of the next vessel, within a reasonable delay at the actual port of discharge. All Containers ready at quay as per terminal lists or included in the load list will be loaded on the following vessel within the volume allocation of MSC unless otherwise agreed between Parties on a case by case basis. In case omission is announced before export containers at the omitted port are ready at quay or before load list was submitted, compensation should be based on the average loadings of ML in the omitted port over the latest three sailings without incident. MSC shall have no other or further responsibility to compensate the other Parties whatsoever. The compensation shall be by space on subsequent sailings or payment at the agreed slot cost, or a combination of both, by agreement. Notwithstanding the aforementioned, no compensation will be granted in case a Party manages to fill its full slot allocation upon departure from the last Westbound or Eastbound port.

(c) ML shall have the option to introduce an ad-hoc or permanent change to the schedule of the service. In both cases, such a change must be communicated in writing to MSC at least 30 days prior to the effective date of such changes. If a permanent change to the schedule of the service is accordance with this Article 5.1(c), MSC may request to review the slot allocation

on the service, or terminate this Agreement by giving 30 days' written notice to ML at any time before the change to the schedule of the service becomes effective, if such change may have a material adverse effect on the commercial benefits which would reasonably be expected to be gained by MSC in the absence of the change being made.

(d) Should a particular sailing be cancelled at the discretion of ML, then ML shall notify MSC at least one month before first port of loading scheduled date of this voyage. In any case, there shall be no slot payments due from MSC nor shall there be any compensation of slots on adjacent sailings, unless otherwise mutually agreed between Parties.

## 5.2 Chartering of Space.

(a) ML shall guarantee the availability of and provide to MSC, and MSC shall purchase from ML, 177 TEU slots or 2,620 tonnes per vessel voyage leg northbound<sup>1</sup> and 177 TEUs or 2,478 tonnes per vessel voyage leg southbound, whichever is used first, including 50 reefer plugs, on each sailing of the string of vessels operated under FMC Agreement No. 011741. ML may sell MSC slots in excess of the foregoing allocation on an ad hoc basis on terms to be agreed by the Parties. Slots and/or plugs not used by MSC shall be available for use by ML, subject to such slots and/or plugs being available to MSC at each subsequent port of call.

(b) The Parties are authorized to discuss and agree on the terms and

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<sup>1</sup> When Papeete is called northbound, the allocation shall be 162 TEUs/2,398 tonnes.

conditions relating to the sale of slots hereunder, including slot hire, the maximum weight restrictions (if any) applicable to the slot allocation, the permitted ratio (if any) of particular equipment sizes, and the compensation to be paid for such slots.

(c) If ML fails to provide MSC with the slots described in Article 5.2(a) it shall, unless otherwise agreed by the Parties pursuant to (i) and (ii) below, make available to MSC, from its own slot allocation on the next vessel in the service, an equivalent number of slots and/or reefer plugs to those which were not made available to MSC in accordance with Article 5.2(a); provided, however, that the Parties may alternatively agree in the event of such failure to comply that ML pay MSC a sum equal to the slot cost multiplied by the number of such unavailable slots or, alternatively, provide MSC with a combination of such monetary and space compensation as mutually agreed between the Parties.

(d) Other than where caused by the omission of a port (in respect of which Article 5.1(c) shall apply) or a force majeure event, when ML due to its fault leaves on the quay some or all of MSC's containers or cargo properly programmed for loading within the vessel's call at the terminal, ML shall: (i) make available to MSC, from its own slot allocation on the next vessel in the service, such number of slots and reefer plugs as is necessary for the carriage of such containers and cargo; provided, however, that the Parties may alternatively agree in the event of such failure to comply that ML shall pay MSC a sum equal to the slot cost multiplied by the number of such slots or, alternatively, provide



MSC with a combination of such monetary and space compensation above as mutually agreed between the Parties; provided, however, that MSC shall not receive compensation for slots and reefer plugs which it has been able to utilise for other containers and cargo before the relevant vessel's departure from the relevant region. ML shall have no other responsibility for compensation to MSC for shut out containers whatsoever. When the shut of containers is imposed by a terminal or is caused by a force majeure event, MSC will carry its shut out containers within its own slot allocation on a subsequent sailing and MSC shall bear all additional expenses related to such shut out Containers. If specifically required, ML shall obtain a written confirmation from the terminal justifying that such actions were outside of ML's control. ML shall without undue delay inform MSC if the relevant vessel leaves a port for any reason before all of MSC's containers and cargo which are programmed for loading have been loaded on the vessel.

(e) MSC may use the Slots and reefer plugs made available under this Agreement for the carriage of cargo and containers between ports in the same region, provided that it does not exceed its agreed allocations. In addition, carriage between ports in the same region is subject to operational constraints, time constraints, and applicable law.

(f) Except as otherwise provided in this Agreement, MSC may not sub-charter slots and/or reefer plugs to any third party without the prior written

consent of ML (not to be unreasonably withheld). Any such third party must be a vessel operating carrier. MSC may always sub-charter slots and/or reefer plugs to its vessel operating affiliates (as may change from time to time) without ML's prior consent. Where MSC sub-charters slots and/or reefer plugs to an affiliate, MSC shall not permit the relevant affiliate to subsequently sub-charter such slots and/or reefer plugs to any other third party without the prior written consent of ML and shall terminate the sub-chartering arrangement immediately upon the sub-chartering party ceasing to be an affiliate. MSC shall remain fully responsible and liable to ML for any breach of its obligations in this Agreement regardless of whether such breach is committed by its affiliate or any third party sub-chartering its slots and/or reefer plugs. All sub-chartering entities shall be duly identified with their proper container operator code on all loading lists and bay plans of all vessels in all ports.

5.3 Terminals. The Parties shall negotiate separately with terminal operators for their individual terminal contracts, and each Party shall be responsible for all expenses arising from the loading, discharging and handling of its containers. The Parties are authorized to discuss and agree on their respective responsibility for charges incurred with respect to certain common terminal-related charges and costs, such as shifting and lashing of containers.

5.4 Compliance with Laws.

(a) The Parties shall comply with all laws, rules, regulations, directives and orders issued by any authorities having jurisdiction in relation to this

Agreement including, to the extent applicable, anti- bribery laws and regulations.

(b) Each Party warrants that it is not identified on the U.S. Treasury Department's list of specially Designated Nationals and Blocked Persons (the SDN List), European Union or other sanctions lists. ML covenants that none of the vessels upon which it provides slots is identified or otherwise targeted, or owned and/or operated, by any person identified or otherwise targeted by the applicable economic sanctions laws and regulations including, without limitations, where these are incorporated with United Nations resolutions, European Union regulations, extraterritorial U.S. federal and state laws and regulations, Australian laws and New Zealand laws (the "Sanctions Laws"). Each Party covenants that no interest in its cargo and/or containers carried on any vessel is identified or otherwise targeted by the Sanctions Laws.

5.5 Miscellaneous. The Parties are authorized to discuss and agree upon such general administrative matters and other terms and conditions concerning the implementation of this Agreement as may be necessary or convenient from time to time, including, but not limited to, performance procedures and penalties; record-keeping; responsibility for loss or damage; insurance; the handling and resolution of claims and other liabilities; indemnification; documentation and bills of lading; general average; salvage; and the treatment of hazardous and dangerous cargoes.

5.6 Further Agreements. Pursuant to 46 C.F.R. § 535.408(b), any further agreement contemplated herein cannot go into effect unless filed and effective

under the Shipping Act of 1984, as amended, except to the extent that such agreement concerns routine operational or administrative matters.

**ARTICLE 6: ADMINISTRATION AND DELEGATIONS OF AUTHORITY**

6.1 This Agreement shall be administered and implemented by meetings, decisions, memoranda and communications between the Parties.

6.2 The following individuals shall have the authority to file this Agreement and any modifications thereto with the Federal Maritime Commission, as well as the authority to delegate same:

- (a) Any authorized officer of each of the Parties; and
- (b) Legal counsel for each of the Parties.

**ARTICLE 7: MEMBERSHIP**

Initially, membership in this Agreement shall be limited to the Parties. Additional parties may be added by unanimous agreement of the Parties.

**ARTICLE 8: VOTING**

Except as may be otherwise provided herein, all decisions hereunder shall require unanimous agreement of the Parties.

**ARTICLE 9: DURATION AND TERMINATION**

9.1 This Agreement will continue indefinitely, subject to termination as provided herein.

9.2 This Agreement may be terminated by either Party by giving not less than three (3) months' written notice of termination to the other Party, with such notice not to be served prior to twelve (12) months after the effective date of Amendment No. 2 hereto.

9.3 Notwithstanding Article 9.2, Agreement may be terminated as follows:

- (a) at any time, by unanimous agreement of all Parties;
- (b) if a Party (the affected Party) is prevented by government intervention (not caused by the contractual obligations of a Party to that government) or decree or by law from continuing in the service, or if its performance becomes illegal and the other Party considers that the absence of the affected Party will substantially prejudice the continued viability of the service, then the Agreement shall be terminated with immediate effect;
- (c) if, following the outbreak of war (whether declared or not) or hostilities or the imminence thereof, or riot, civil commotion, revolution or widespread terrorist activity, any Party, being of the opinion that the events will render the performance of the Agreement hazardous or wholly or substantially imperilled, can give one month prior notice to terminate the Agreement;
- (d) if, at any time during the term of this Agreement there is a Change of Control of a Party, and the other Party is of the opinion, arrived at in good faith, that such Change of Control is likely to materially prejudice the cohesion or viability of the Agreement, then the other Party may, within 1 month of becoming aware of such Change of Control, give not less than 3 months' notice in writing terminating this Agreement. For the purposes of this Article 9.3(d), a "Change of Control" of a Party shall include (other than as presently exists): (i) the possession, direct or indirect by any person or entity, of the power to direct or cause the direction of the management and policies of the Party or its parent, whether by the ownership and rights of voting shares, by contract or otherwise; or (ii) the ownership by the Party's parent of 50% or less of the equity interest or voting power in such Party, save that the transfer of any shares in a Party or its direct or indirect parent between close members of the same family or between affiliates shall not constitute a Change of Control;

(e) if, at any time during the term of this Agreement any Party (the affected Party): (i) is dissolved; (ii) becomes insolvent or unable to pay its debts as they fall due; (iii) makes a general assignment, arrangement or composition with, or for the benefit of its creditors; (iv) has a winding-up order made against it or enters into liquidation whether voluntarily or compulsorily; (v) seeks or becomes the subject of the appointment of an administrator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vi) is affected by any event or act similar to or under which the applicable laws of the jurisdiction where it is constituted has an analogous effect to any of those specified in the sub-clauses (i) to (v) above; or (vii) takes any action in furtherance of any of the foregoing acts (other than for the purpose of the consolidation, reconstruction or amalgamation or previously approved in writing by the other Party and the other Party is of reasonable opinion that such event or occurrence is or may be materially detrimental to this Agreement, or that sums owing under this Agreement (other than those disputed in good faith) may not be paid in full or that their payment may be significantly delayed, then the other Party may give notice to the affected Party terminating this Agreement with immediate effect;

(f) if FMC Agreement No. 011741 is terminated, then this Agreement shall terminate effective as of the terminate date of said agreement.

9.4 Notwithstanding Article 9.2, a Party may terminate this Agreement with immediate effect if the other Party: (i) repeatedly fails to comply with Article 5.4 (Compliance with Laws); or (ii) commits a material breach of this Agreement where such breach has not been remedied to the reasonable satisfaction of the non-defaulting Party within a reasonable period of time, after receipt by the defaulting Party of written notice from the non-defaulting Party requiring such remedy; or (iii) fails to pay any amount when it becomes due and payable under the terms of this Agreement, where such failure has not been remedied within 30 working days of receipt by the defaulting Party of written notice from the non-defaulting Party requiring such remedy.

9.5 Notwithstanding the termination of this Agreement in accordance with this Article 9, the non-defaulting Party retains its right to claim against the defaulting Party for any loss caused by or arising out of such termination.

9.6 Upon the termination of this Agreement for whatever cause: (i) a final calculation shall be carried out of the amount due (if any) under this Agreement and any amount due to be paid within 30 days of the date of termination or withdrawal if not otherwise due for payment at an earlier time; (ii) the carriage of cargoes already lifted shall be completed by due delivery at the port of discharge; and (iii) the Parties shall continue to be liable to one another in respect of all liabilities and obligations accrued prior to termination or withdrawal.

9.7 Any notice served by a Party under this Agreement shall be sent in writing by email to the address of the other Party set out in Article 3.

#### **ARTICLE 10: ASSIGNMENT**

No Party may assign or transfer its rights or obligations under this Agreement either in part or in full to any third party, company, firm or corporation without the prior written consent of the other Party, which consent may be withheld for any reason. Notwithstanding the preceding sentence, a Party may assign its rights under this Agreement to an affiliate without approval provided that, if the assignee ceases to be an affiliate of the relevant Party, the assignee shall, within 10 working days of so ceasing, assign its rights under this



Agreement to the assigning Party or an affiliate of the assigning Party.

**ARTICLE 11: LAW, ARBITRATION AND MEDIATION**

11.1 Except as may be otherwise provided in Article 11.2 hereof, this Agreement, and any matter or dispute arising out of this Agreement, shall be governed by and construed in accordance with the laws of England and Wales.

11.2 Any question or dispute arising solely out of or in connection with outward cargo shipping from Australia shall be notified by the Parties to the Minister responsible for the administration of Part X of the Competition and Consumer Act 2010 requesting permission for the question or dispute to be settled in accordance with Article 11.3. If such permission is not given, the question or dispute shall be determined in Australia under Australian law, by arbitration. Arbitration shall be before a single arbitrator to be appointed by agreement or, in default of agreement, by the Australian Commercial Disputes Centre and the arbitration shall take place in Sydney in accordance with and subject to the Commercial Arbitration Act 1984 (NSW) and UNCITRAL Arbitration Rules. Where the amount is USD 100,000 or less, the arbitration shall proceed on the basis of documents and written submissions only. Any right of appeal or other recourse under Part V of the Commercial Arbitration Act 1984 shall be excluded to the extent permitted under that Act.

11.3 Subject to Article 11.2, any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in accordance



with the Arbitration Act 1996 together with the LMAA (London Maritime Arbitrators Association) terms, save where the amount in dispute is less than USD 100,000, in which case the LMAA Small Claim Procedure shall apply. The Parties agree to appoint a sole arbitrator, having appropriate commercial and consortia experience, within 21 days of any Party seeking an appointment. Should there be no agreement on such appointment within 21 days, the LMAA President will appoint a sole arbitrator (or a panel of three arbitrators, as appropriate) at the request of any Party.

11.4 The Parties are authorized to discuss and agree on procedures for the mediation of any dispute or difference arising out of or in connection with this Agreement.

#### **ARTICLE 12: COUNTERPARTS**

This Agreement and any future amendment hereto may be executed in counterparts. Each such counterpart shall be deemed an original, and all together shall constitute one and the same agreement.

#### **ARTICLE 13: SEPARATE IDENTITY/NO AGENCY OR PARTNERSHIP**

Each Party shall retain its separate identity and shall have separate sales, pricing and, to the extent applicable, separate marketing function. Each Party shall issue its own bills of lading. Nothing in this Agreement shall give rise to nor shall be construed as constituting a partnership for any purpose or to any extent. No Party shall be construed or constituted as the agent of the other

unless expressly stated or constituted as such by the terms of this Agreement.

**ARTICLE 14: NOTICES**

All notices required to be given in writing, unless otherwise specifically agreed, shall be sent by registered mail or courier service to the addresses listed in Article 3.

**ARTICLE 15: LANGUAGE**

This Agreement and all notices, communications or other writings made in connection therewith shall be in the English language. Neither Party shall have any obligation to translate such matters into any other language and the wording and meaning of any such matters in the English language shall govern and control.

**ARTICLE 16: SEVERABILITY**

If any provision of this Agreement is held to be invalid, illegal or unenforceable in any jurisdiction in which this Agreement is operational, such provisions shall cease to have effect between the Parties, but only to the extent of such invalidity, illegality or unenforceability and no further. All remaining provisions hereof shall remain binding and enforceable.

**ARTICLE 17: WAIVER**


No variation or waiver of any of the provisions of this Agreement and no agreement concluded pursuant to any of the provisions of this Agreement shall be binding unless it is in writing and signed by duly authorised representatives of all Parties.

ML/MSC OCEANIA  
Space Charter Agreement  
FMC Agreement No. 012139-003  
(2<sup>nd</sup> Edition)


SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have agreed this 18 day of  
DEC, 2019, to amend this Agreement as per the attached page and to file  
same with the Federal Maritime Commission.

For and on behalf of  
Maersk A/S

  
\_\_\_\_\_  
Name LMS JENSEN  
Title VP NETWORK  
Date 12/12/19

For and on behalf of  
MSC Mediterranean Shipping Company S.A.

  
\_\_\_\_\_  
Name MICHELE BORTOLICA  
Title SVP  
Date 28/01/2020

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